IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINETEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 20231 of 2004

Between:

Ch.Someshwar Rao, s/o Gowreeshwar Rao,
r/o Parvathagiri (Village and Mandal), Warangal District.

..... PETITIONER

AND

1 The Warangal District Co.operative Central Bank Ltd., rep., by its General Manager, Subedari, Hanamkonda, Warangal District.
2 The District Co-operative Officer, Warangal, Warangal District.
3 The Primary Agricultural Cooperative Society, Parvathagiri, Warangal District rep., by its Person-in-Charge.
4 The Warangal District Cooperative Central Bank Ltd., Nekkonda Branch, rep., by its Branch Manager.

.....RESPONDENTS.

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents in terminating the services of the petitioner as Clerk in the office of the 3rd respondent, without any notice, enquiry and any written order as illegal and arbitrary and consequently direct the respondents to continue the petitioner as Clerk in the office of the 3rd respondent.

Counsel for the Petitioner: MR.A.PRABHAKAR RAO

Counsel for the Respondent No.2: GP FOR COOPERATION

Counsel for the respondent Nos. 1 & 3: Mr. P. Nageswara Sree

Counsel for the respondent No.4: Mr. J. Venkateswara Reddy

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 20231 of 2004

O R D E R:

Challenging the termination of services of the petitioner as Clerk in the Office of the 3rd respondent without any notice, enquiry and written order, the present writ petition is filed.

The brief averments that are necessary for the disposal of the present writ petition may be stated as follows:

The petitioner was appointed as Salesman in a regular vacancy in the year 1986. He was promoted as Clerk. He was terminated in the month of April, 1990. On his representation, the 3rd respondent again appointed him as Clerk by resolution dated 2.11.1998. On 1.9.2004 the 3rd respondent again orally terminated the services of the petitioner. The respondents did not issue any notice nor conduct any enquiry before terminating his services. The respondents even did not pass an order in writing. Hence, the present writ petition.

The 3rd respondent filed counter affidavit stating that the grievance of the petitioner is purely pertaining to personal contract of service and there is no violation of any statutory right. The then officers of the respondent-society engaged the petitioner in total violation of the rules and the instructions given by the Registrar of Cooperative Societies from time to time. The Managing Committee of the respondent-society in its meeting held on 15.8.1998 resolved to engage the petitioner as clerk due to increase in work load pending appointment of a permanent employee in the said post and further

resolved to get permission for the same from the Divisional Cooperative Officer, Warangal. The Divisional Co.op. Officer, Warangal vide proceedings dated 23.9.1999 informed the respondent-society that the action taken by the Managing Committee of the respondent-society is wholly illegal and not to implement the illegitimate resolution passed by the Managing Committee of the respondent-society on 15.8.1998 and further instructed to cancel the said appointment given to the petitioner. In spite of the same the petitioner was continued in service. The continuation of the petitioner in service is contrary to the provisions of the Act 2 of 1994 and therefore the services of the petitioner were disengaged w.e.f. 1.9.2004. The respondent-society is suffering from accumulated loss since several years and is not in a position to meet the expenditure towards pay and allowances of such employees so engaged. Hence, the respondents pray to dismiss the writ petition.

Learned counsel for the petitioner contended that without conducting any enquiry and without serving any notice the petitioner was orally terminated and therefore the oral termination of the petitioner is illegal.

On the other hand, learned Government Pleader for respondents 1, 2 and 4 contended that the staffing pattern has not been approved and as per Section 116-C of the A.P. Cooperative Societies Act the expenditure of the Society shall not exceed 2% of the working capital or 30% of the gross profit in terms of actuals of the previous year whichever is less and that the respondent-Society is suffering from accumulated loss and as the appointment of the petitioner illegal, there is no need to give any termination order. Hence, he prays to dismiss the writ petition.

Learned standing counsel for the 3rd respondent contended that the appointment of the petitioner was against the Rules and therefore no enquiry need be conducted. For the said proposition, he relied upon a decision of the Division Bench of Kerala High Court in **Koodarani S.C. Bank v. M.M. Lissy & others**.

The case of the petitioner is that he was engaged in the year 1986 as Salesman in a regular vacancy. Thereafter, the 3rd respondent terminated his services in the month of April, 1990. On his representation, he was again appointed as a Clerk by Resolution dated 2.11.1998. From then onwards he was working as Clerk till 1.9.2004, on which date he was orally informed not to come to office. It is not stated in the writ affidavit that he was selected through a regular selection process. As per the resolution of the 3rd respondent dated 2.11.1998, the petitioner was appointed as Clerk on a consolidated pay of Rs.800/- in view of the fact that the work load in the respondent-society has been considerably increased. The appointment order and the terms and conditions of the appointment when the 3rd respondent passed resolution dated 2.11.1998 are not filed into court to show the nature of appointment and the terms and conditions agreed by the writ petitioner.

Under Section 116-C of the A.P. Cooperative Societies Act, the expenditure towards pay and allowances of the employees of the Society shall not exceed 2% of the working capital or 30% of the gross profits in terms of actuals of the previous year whichever is less. It is specifically stated in the counter that the 3rd respondent-society is suffering from accumulated loss since several years and it is not in a position to meet the expenditure towards pay and allowances of the employees so engaged. The said fact is not denied or disputed. The nature of appointment and the rules or bye-laws governing the service conditions of the employees are brought to the notice of the court to show that the action of the respondents in terminating the services of the petitioner w.e.f. 1.9.2004 is contrary to the bye-laws or rules governing the service conditions. However, learned counsel for the respondent No.3 placed strong reliance on the decision cited (1) supra, wherein it is held:

> “We are in respectful agreement with the above observation made by the learned Judge. In the instant case, the appointment of Smt. Lissy was against statutory rules. As

> the result of that engagement, there was no legal relationship of master and servant between the bank and Smt. Lissy. Consequent on the coercive action and orders passed by the authorities under the Cooperative Societies Act, Smt. Lissy could not be continued in the employment of the bank. So, her services had to be terminated. It was in fact so terminated not as a result of any voluntary act of the Bank. It was the result of the directives given by the authorities of the Cooperative Department, over which the bank had no control".

In this case also, the appointment of the petitioner as clerk in pursuance of the resolution passed by the 3rd respondent on 2.11.1998 is contrary to the provisions of A.P. (Regulation of appointment to Public Services and rationalization of staffing pattern) Act, 1994 (for short, 'Act,1994') wherein no appointment shall be made to the public servants in any establishment including Cooperative Societies registered under the A.P. Cooperative Societies Act, 1964. The said Act came into force w.e.f. 25.11.1994. As the appointment of the petitioner is completely in violation of the Rules, the Divisional Cooperative Officer, Warangal vide proceedings Rc.No.2497/97-D dated 23.9.1999 informed the 3rd respondent-society that the action taken by the Managing Committee of the 3rd respondent-society is wholly illegal and not to implement the illegitimate resolution passed by the Managing Committee of the 3rd respondent-society dated 15.8.1998 and further instructed to cancel the appointment order given to the petitioner. In spite of the said fact, the 3rd respondent-society continued the petitioner till he was orally terminated on 1.9.2004. In this case the appointment of the petitioner was against the statutory rules. Therefore, he cannot be continued in the post held by him. The argument that the petitioner worked in the bank nearly for six years cannot be accepted in view of the fact that the appointment order was made in violation of the provisions

contained in the Cooperative Societies Rules. It is not a termination of the petitioner's services by voluntary act on the part of the 3rd respondent, but it is only disengaging the services of the petitioner w.e.f. 1.9.2004 on account of supervening act or event over which the employer had no control. If the petitioner was terminated from service by the 3rd respondent either orally or in writing, then only a notice followed by enquiry are required. Since the Divisional Cooperative Officer, Warangal has not approved the appointment of the petitioner and also instructed the 3rd respondent to cancel the appointment of the petitioner, the 3rd respondent has opened its eyes after lapse of four years and disengaged the services of the petitioner w.e.f. 1.9.2004. Therefore, this court is of the opinion that no enquiry need be conducted in such circumstances. The contention that termination of his services amounts to retrenchment under the Cooperative Societies Act is also unsustainable. For this proposition, it is held by the Division Bench of Kerala High Court in the decision cited (1) supra, as follows:

> "A retrenched workman is entitled to re-employment in preference to others when the employer proposed to take into his employ any other person, as per the provisions contained in Section 25-H of the Act. This shows that the termination of services of the workman should have been from a post to which he could have been continued. If the post is such that its continuance is not possible, then the termination of service of the workman from that post cannot amount to retrenchment as defined under the Act".

Following the decision of the Division Bench of Kerala High Court (cited above), I am of the considered view that the writ petition is devoid of merit since the appointment of the petitioner itself is *ab initio* void and contrary to the Act, 1994.

The writ petition is accordingly dismissed. No costs.

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K.C. Bhanu, J.

Date: --01—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The General Manager, Warangal District Co.operative Central Bank Ltd., Subedari, Hanamkonda, Warangal District.
2 The District Co-operative Officer, Warangal, Warangal District.
3 The Person-in-charge, Primary Agricultural Cooperative Society, Parvathagiri, Warangal District.
4 The Branch Manager, Warangal District Cooperative Central Bank Ltd., Nekkonda Branch, Warangal District.

5. 2CCs to the Government Pleader for Cooperation, High Court Buildings, Hyderabad (OUT).

6. 2CD copies.